

Feb 13, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID R. PRIEST,

Plaintiff,

v.

D HOLBROOK, Superintendent;
JACKSON, Custody Program
Supervisor; A. ALVARADO-
JACKSON, Custody Unit Supervisor;
DAVID BREWER, Unit Sgt;
DUNCAN, Correction Officer
#7388W; DOE, Correction Officer
#7423,

Defendants.

NO: 2:17-CV-133-RMP

ORDER GRANTING DEFENDANTS'
AMENDED MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT is Defendants' Amended Motion for Summary
Judgment, ECF No. 61. The Court has considered the record, the relevant case law,
and is fully informed.

BACKGROUND

Plaintiff David Priest was incarcerated at the Washington State Penitentiary
in Walla Walla, Washington, when the events giving rise to his claims occurred.

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JUDGMENT ~ 1

1 See ECF No. 15 at 6. All of Mr. Priest's claims involve the alleged theft or
2 destruction of twenty eagle feathers belonging to him, after prison staff transferred
3 him from his single-person cell to segregation on August 9, 2015. *See id.* Mr.
4 Priest is a member of the Coleville Tribe and practices the Seven Drums religion.
5 ECF No. 67-1 at 14. Mr. Priest explains that eagle feathers play a critical role in
6 Seven Drums ceremonies, such as naming ceremonies, and describes eagle feathers
7 as sacred religious items. *Id.* at 21. Mr. Priest's sacred eagle feathers were sitting
8 on his bed when he was taken from his single-person cell and transferred to
9 segregation. *See id.* at 74. He never saw his eagle feathers again. *Id.*

10 It is uncontested that Mr. Priest was absent when his eagle feathers were
11 taken. *Id.* at 34. Additionally, neither party has presented evidence from an
12 eyewitness, or any other direct evidence demonstrating who took the feathers.
13 Thus, evidence regarding custody staff's access to Mr. Priest's property during Mr.
14 Priest's absence is central to this case.

15 Custody staff, including correction officers ("COs"), generally work in
16 three, eight-hour shifts. ECF No. 56 at 2. Custody staff assigned to the first shift
17 work from 10:00 p.m. to 6:00 a.m.; second-shift staff works from 6:00 a.m. to 2:00
18 p.m.; and third-shift staff works from 2:00 p.m. to 10:00 p.m. *Id.* On August 9,

1 2015, Lieutenant David Brewer¹ was working the third shift, from 2:00 p.m. to
2 10:00 p.m. *Id.* at 3. When Lieutenant Brewer worked the third shift in Mr. Priest's
3 former unit, he generally supervised six or seven COs. *Id.* at 2.

4 According to Lieutenant Brewer, Mr. Priest began acting strangely in the
5 mid-afternoon, and he appeared to be "under the influence of some type of
6 substance." *Id.* at 3. Lieutenant Brewer recalls COs Steven Medlock and Derek
7 Henderson escorting Mr. Priest from his cell to a holding cell, where Mr. Priest
8 was ordered to submit to a urinalysis ("UA"). *Id.* Mr. Priest did not provide a
9 sample. *Id.* Because Mr. Priest did not provide a UA, a facility nurse examined
10 him, and she concluded that he may have been under the influence of a substance.
11 *Id.* Mr. Priest denies that he was under the influence of any substance at that time.
12 ECF No. 67-1 at 78. Lieutenant Brewer states that Mr. Priest was found guilty of
13 an infraction for refusing a UA and was taken into segregation. ECF No. 72-1 at 2.
14 This occurred during Lieutenant Brewer's shift, the third shift.

15 When an inmate is taken into segregation, a CO (or multiple COs) working
16 in the inmate's unit pack up the property into boxes and then take the property to
17 the unit property room to be inventoried. *See* ECF No. 67-1 at 32–35. The COs
18 who pack up an inmate's property when the inmate is transferred are not

19
20 ¹ At the time of the acts giving rise to Mr. Priest's claims, Lieutenant Brewer was
21 Sergeant Brewer. ECF No. 56 at 1–2.

1 necessarily the COs who inventory that property. In fact, Lieutenant Brewer
2 explains in his declaration that it is standard procedure “for COs on the first shift to
3 inventory property packed out by COs on the third shift because first shift COs
4 usually ha[ve] more time to do this task.” ECF No. 56 at 4. The COs who
5 inventoried Mr. Priest’s belongings were Defendants Doe (Jose Berreras-
6 Miranda)² and William Duncan. ECF Nos. 57 at 2 and 71 at 2. Defendants Doe
7 and Duncan claim that Mr. Priest’s property had been packed out of Mr. Priest’s
8 cell by third-shift COs on August 9, 2020, and that they inventoried the property
9 the following day, while working the first shift. *Id.* Defendants Doe and Duncan
10 assert that there were no eagle feathers in Mr. Priest’s property, that they did not
11 see Mr. Priest’s eagle feathers, and that they did not enter Mr. Priest’s cell to
12 remove property on August 9 or 10, 2015. *Id.*

13 Mr. Priest filed a grievance in response to his missing eagle feathers. ECF
14 No. 72-1. He explained:

15 _____
16 ² When questioned about Defendant Doe during his deposition, Mr. Priest
17 explained that he sued John Doe because he was unable to read one of the
18 signatures on the property inventory form missing his eagle feathers. ECF No. 67-
19 1 at 41. Although two COs had signed the inventory form, he could only identify
20 one of them from their signatures. *See id.* The officer with the previously
21 unidentifiable signature has since been identified as Jose Barreras-Miranda. *Id.*

1 On Aug. 9th 2015 Sgt Brewer of G Unit West complex had me put in
2 IMU for not being able to provide ua—I had 20 eagle feathers i had just
3 received from chaplain—these feathers were spread out on my bed in
4 GW206 (singleman cell) whoever packed my property/ cell did
5 something w/my eagle feathers. I just received a kite back from
6 chaplain Alden saying he never received any feathers. I had 2 boxes 1
7 for hobby supplies 1 for sacred items the feathers should have been
8 placed in the sacred box. (they were not)

9 *Id.* at 2. In response to the grievance, Unit Manager A. Alvarado-Jackson reported
10 that no eagle feathers had been logged as inventory. *Id.* She also mentioned that
11 COs Duncan and Barreras-Miranda inventoried Mr. Priest’s property and did not
12 document any eagle feathers. *Id.*

13 On September 20, 2017, while still incarcerated, Mr. Priest filed his First
14 Amended Complaint against Defendants Superintendent Holbrook, Custody
15 Program Supervisor Jackson, Custody Unit Supervisor Alvarado-Jackson,
16 Lieutenant Brewer (formerly Sergeant Brewer), CO Duncan, and CO Doe. Mr.
17 Priest has since been released from prison. ECF 67-1 at 11.

18 Mr. Priest claims that Defendants have violated the First Amendment, the
19 Fourteenth Amendment Due Process Clause and Equal Protection Clause, the
20 Religious Land Use and Institutionalized Persons Act (“RLUIPA”), and the
21 Religious Freedom Restoration Act (“RFRA”). ECF No. 15 at 6. Mr. Priest also
asserts an Eighth Amendment claim in his First Amended Complaint’s Statement
of Facts. *See* ECF No. 15 at 8–9. Mr. Priest brings his constitutional claims

1 through 42 U.S.C. § 1983. Defendants have moved for summary judgment and
2 assert qualified immunity. ECF No. 61.

3 **LEGAL STANDARD**

4 Summary judgment is appropriate if the pleadings, depositions, answers to
5 interrogatories, and admissions on file, together with the affidavits, if any, show
6 that there is no genuine issue as to any material fact and that the moving party is
7 entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). A key purpose of
8 summary judgment is to “isolate and dispose of factually unsupported claims
9 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). Summary judgment is not
10 a disfavored procedural shortcut, but is instead the “principal tool[] by which
11 factually insufficient claims or defenses [can] be isolated and prevented from going
12 to trial with the attendant unwarranted consumption of public and private
13 resources.” *Celotex*, 477 U.S. at 327.

14 The moving party bears the initial burden of demonstrating the absence of a
15 genuine issue of material fact. *See Celotex*, 477 U.S. at 323. The burden then
16 shifts to the non-moving party to set out specific facts showing a genuine issue for
17 trial. *Celotex Corp.*, 477 U.S. at 324 (quoting Fed. R. Civ. P. 56(e)). A genuine
18 issue of material fact exists if sufficient evidence supports the claimed factual
19 dispute, requiring a jury or judge to resolve the parties' differing versions of the
20 truth at trial. *T.W. Elec. Service, Inc. V. Pacific Elec. Contractors Ass'n*, 809 F.2d
21 626, 630 (9th Cir.1987).

1 The moving party may also meet its burden by “pointing out to the district
2 court [that there is] an absence of evidence to support the nonmoving party’s case.”
3 *Celotex Corp.*, 447 U.S. at 325. “If the nonmoving party cannot muster sufficient
4 evidence” to establish the essential elements of its claim in response to the motion
5 for summary judgment, then “a trial would be useless and the moving party is
6 entitled to summary judgment as a matter of law.” *Celotex Corp.*, 477 U.S. at 331.

7 At summary judgment, the court draws all reasonable inferences in favor of
8 the nonmoving party. If the nonmoving party produces evidence that contradicts
9 evidence produced by the moving party, the court must assume the truth of the
10 nonmoving party's evidence with respect to that fact. *T.W. Elec. Service, Inc.*, 809
11 F.2d at 631. The evidence presented by both the moving and non-moving parties
12 must be admissible. Fed. R. Civ. P. 56(e). Furthermore, the court will not
13 presume missing facts, and non-specific facts in affidavits are not sufficient to
14 support or undermine a claim. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89
15 (1990).

16 DISCUSSION

17 I. Constitutional Claims under 42 U.S.C. § 1983

18 Mr. Priest brings his various constitutional claims through 42 U.S.C. § 1983.
19 “Traditionally, the requirements for relief under [§] 1983 have been articulated as
20 (1) a violation of rights protected by the Constitution or created by a federal
21 statute, (2) proximately caused (3) by the conduct of a ‘person’ (4) acting under

1 color of state law.” *Crumpton v. Gates*, 947, F.2d 1418, 1420 (9th Cir. 1991).
2 Each of Mr. Priest’s constitutional claims is based on the taking of his eagle
3 feathers. Rather than focusing on the prongs of the alleged constitutional
4 violations, the parties’ briefing in this matter focused on causation issues under
5 Section 1983. Specifically, the parties’ arguments address whether Defendants
6 caused Mr. Priest’s eagle feathers to be taken from him, resulting in the alleged
7 constitutional violations. The Court addresses these causation issues related to Mr.
8 Priest’s Section 1983 claims now.

9 **A. Integral Participant Standard**

10 A defendant only is liable under Section 1983 if he or she personally
11 participated in the violation of the plaintiff’s constitutional or federal rights.
12 *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). The Ninth Circuit has
13 explained that, when multiple officers act to cause the alleged harm, each officer’s
14 “liability under section 1983 is predicated on his ‘integral participation in the
15 alleged violation.’” *Blankenhorn v. City of Orange*, 485 F.3d 463, 481 n.12 (9th
16 Cir. 2007) (quoting *Chuman v. Wright*, 76 F.3d 292, 294–95 (9th Cir. 1996)); *see*
17 *also Nicholson v. City of L.A.*, 935 F.3d 685, 691–92 (9th Cir. 2019) (“A police
18 officer need not have been the sole party responsible for a constitutional violation
19 before liability may attach.”). “[I]ntegral participation’ does not require that each
20 officer’s actions themselves rise to the level of a constitutional violation.”

21 *Blankenhorn*, 485 F.3d at 481 n.12 (quoting *Boyd v. Benton Cnty.*, 374 F.3d 773,

1 780 (9th Cir. 2004)). However, “it does require some fundamental involvement in
2 the conduct that allegedly caused the violation.” *Id.*

3 In *Jones v. Williams*, the Ninth Circuit further explained causation issues
4 that arise in Section 1983 cases when there is no direct evidence of each individual
5 defendant’s participation in the alleged constitutional violations. 297 F.3d 930 (9th
6 Cir. 2002). In that case, Plaintiff Jones argued that the defendant police officers
7 violated the Fourth Amendment by conducting an unreasonable search of her
8 home. The officers admitted that, during the search, they “moved furniture,
9 opened doors and drawers, moved pictures, broke a lock on a closet door, moved
10 clothes and auto parts around . . . and broke drawers off of a dresser.” *Id.* at 933.
11 There also was a urine smell in Ms. Jones’s iron after the search of her home,
12 indicating that one of the officers had urinated in her iron. *Id.* at 933–34.
13 However, all of the officers denied urinating in the iron. *Id.* at 394. Additionally,
14 the officers denied responsibility for the condition of the living room. *Id.*

15 At trial, Ms. Jones proposed a jury instruction on group liability, but the trial
16 court rejected it. *Id.* 933–34. Ms. Jones argued that she needed the instruction
17 because “the officers escorted all of the residents out of the house before they
18 began to search, and, therefore, there were no witnesses to contradict the denials of
19 the officers” with respect to the iron and the living room’s condition. Ms. Jones’s
20 proposed jury instruction was:

1 When a plaintiff cannot specifically state which defendant police
2 officers engaged in an unreasonable search of a plaintiff's residence,
3 but there is evidence to specify that certain defendants were among the
4 police officers who were inside plaintiff's residence, and the officers
agree they are among the officers who were present, the jury can
reasonably infer that the named officers were participants in the alleged
unlawful conduct.

5 *Id.* at 935.

6 The Ninth Circuit upheld the trial court's decision to reject the proposed
7 instruction, finding that it would have allowed the jury to make impermissible
8 inferences regarding liability based on the officers' mere presence at the scene of
9 the search. *Id.* at 938 (explaining that the proposed instruction "would have
10 afforded an impermissible basis for liability" rather than "a permissible
11 inference").

12 This case presents similar issues. Like Ms. Jones, Mr. Priest was removed
13 from the scene of the alleged constitutional violation prior to its occurrence. *See*
14 ECF No. 67-1 at 75 (explaining that Mr. Priest was not present when property was
15 removed from his cell). However, as Mr. Priest is the plaintiff, he must produce
16 some direct or circumstantial evidence showing that the named Defendants
17 personally participated in taking his eagle feathers. He cannot rest on speculation
18 or on the allegations in his Complaint at the summary judgment phase. *See T.W.*
19 *Elec. Serv., Inc.*, 809 F.2d at 630.

1 Regarding Defendants Holbrook, Jackson, Alvarado-Jackson, and Brewer,
2 Mr. Priest admits that he has no evidence or information showing that they
3 personally participated in taking his eagle feathers. ECF No. 67-1 at 40–41.

4 However, with respect to Defendants Duncan and Doe, Mr. Priest argues
5 that the evidence shows that they took his eagle feathers, thus violating various
6 constitutional rights. *See id.* at 41. In his deposition, Mr. Priest states that
7 Defendants Duncan and Doe packed out his cell, even though Mr. Priest was not
8 present and has no witness testimony or other evidence to corroborate this
9 statement. *Id.* During his deposition, Mr. Priest stated that he remembers
10 Defendants Duncan and Doe working with Lieutenant Brewer, during the third
11 shift, on August 9, 2015. *See* ECF No. 67-1 at 69. From this fact, combined with
12 the fact that Defendants Duncan and Doe inventoried Mr. Priest’s property, Mr.
13 Priest seems to infer that Defendants Duncan and Doe packed out his cell and took
14 his eagle feathers. *See* ECF No. 15 at 7.

15 It is disputed whether Defendants Duncan and Doe worked the third shift,
16 the shift during which Mr. Priest’s belongings were taken from his cell. *See* ECF
17 No. 56 at 3–4. Neither Defendants nor Plaintiff have submitted time sheets
18 indicating which COs worked the third shift on August 9, 2015. Defendants
19 Duncan and Doe have submitted declarations in this matter, stating that they did
20 not work the third shift that day, and that they were not present when Mr. Priest’s
21 property was collected. ECF Nos. 57 at 2 and 71 at 2. They explain that they

1 worked the following shift, the first shift, and inventoried Mr. Priest's belongings
2 at that time. *Id.* They claim that Mr. Priest's cell already had been cleared out by
3 different COs. *See id.*; *see also* ECF No. 56 at 3–4.

4 Because this is a motion for summary judgment, the Court must view all
5 facts in the light most favorable to the non-moving party. Mr. Priest stated in his
6 deposition that he remembers Defendants Duncan and Doe working the shift
7 during which he was transferred to segregation, under the supervision of
8 Lieutenant Brewer. That was the third shift. Therefore, viewing the facts in the
9 light most favorable to Mr. Priest, Defendants Duncan and Doe were working the
10 third shift on August 9, 2015, the shift during which Mr. Priest's belongings were
11 removed from his cell.

12 However, as the Ninth Circuit explained in *Jones*, mere presence at the
13 scene of a constitutional violation is not enough to show personal, integral
14 participation in the alleged violation. As Lieutenant Brewer explained, when he
15 worked the third shift in Mr. Priest's former unit, he generally would supervise six
16 or seven COs. *Id.* at 2. Even if the Court assumes that Defendants Duncan and
17 Doe were working the third shift on August 9, 2015, it cannot jump to the
18 conclusion that they were the COs who packed out Mr. Priest's cell that night, or
19 that they took Mr. Priest's eagle feathers, without more facts presented. While the
20 Court must draw reasonable inferences in the Plaintiff's favor on a motion for
21 summary judgment, *T.W. Elec. Service, Inc.*, 809 F.2d at 631, it cannot draw the

1 impermissible inference that Defendants Duncan and Doe caused or integrally
2 participated in the alleged unlawful activity because they were present during the
3 third shift on August 9, 2015. *See Jones*, 297 F.3d at 937–38 (“[A]llowing the jury
4 to find individual officers liable when there is no evidence to link them to specific
5 actions would have been erroneous as a matter of law.”).

6 One could argue that because Defendants Duncan and Doe filled out Mr.
7 Priest’s property inventory form, it can be inferred that they were integral
8 participants in the constitutional violation. However, it is undisputed that the
9 inventory form was filled out the day after Mr. Priest was taken to segregation and
10 his property was removed from his cell, August 10, 2015. It is not reasonable to
11 infer that Defendants Duncan and Doe took Mr. Priest’s feathers from the fact that
12 they recorded Mr. Priest’s property the following day, without additional evidence.

13 Mr. Priest has not submitted evidence demonstrating that any of the
14 Defendants participated in taking his eagle feathers, the act which forms the basis
15 of each of his constitutional claims. Therefore, no reasonable juror could conclude
16 that the Defendants were integral participants in the alleged constitutional
17 violations.

18 ***B. Res Ipsa Loquitor***

19 With respect to his Section 1983 claims, Mr. Priest argues that causation
20 may be established through the doctrine of res ipsa loquitor, and therefore
21 summary judgment is inappropriate. He states that “where a group of defendants

1 are the only ones capable of the alleged constitutional harm, those defendants are
2 inferred to be responsible under the doctrine of res ipsa loquitor.” ECF No. 65 at
3 4–5 (citing *Johnson v. United States*, 333 U.S. 46, 48 (1948)). Mr. Priest cites to
4 the concurrence in *Jones* for the proposition that “a *res-ipsa* type instruction can be
5 given in a case [alleging a § 1983 violation]” *Id.* at 5 (quoting *Jones*, 297
6 F.3d at 939 (Silverman, J., concurring)). In the *Jones* concurrence, Judge
7 Silverman wrote that a res-ipsa type instruction is appropriate in a Section 1983
8 case only when: (1) “the defendants are uniquely positioned, to the exclusion of
9 others, to know the circumstances that caused the plaintiff’s injury”; and (2) “the
10 injury would not normally occur without wrong-doing on the defendants’ part.”
11 *Id.* While Judge Silverman maintained that res ipsa loquitor applies to Section
12 1983 claims, he agreed with the outcome of the decision because the facts of the
13 *Jones* case did not support a res ipsa loquitor instruction. *Jones*, 297 F.3d at 939.
14 “Specifically, the evidence at trial was not susceptible of the interpretation that the
15 damage occurred while no one but the officers was present.” *Id.*

16 Even if it is appropriate to apply res ipsa loquitor to Section 1983 claims,
17 uncontroverted facts on the record show that the named Defendants in this matter
18 were not the only people who had access to Mr. Priest’s cell or to his eagle
19 feathers. *See* ECF No. 67-1 at 75. As in *Jones*, the record here is “not susceptible
20 of the interpretation that the damage occurred while no one but the [Defendants]
21 was present.” *Jones*, 297 F.3d at 939. In other words, even if res ipsa loquitor

1 applies to Section 1983 claims generally, it does not apply in this matter based on
2 the facts presented. Therefore, Plaintiff cannot use res ipsa loquitor to establish
3 causation with respect to his Section 1983 claims.

4 **C. Supervisory Liability**

5 Mr. Priest also has alleged that Defendants Holbrook, Jackson, Alvarado-
6 Jackson, and Brewer are responsible for the alleged constitutional violations via
7 supervisory liability. He argues that their actions, taken in their roles as
8 supervisors, caused the loss and/or destruction of his eagle feathers, resulting in the
9 alleged constitutional violations.

10 In a Section 1983 action, “[t]here is no respondeat superior or vicarious
11 liability.” *Hunt v. Davis*, 749 Fed. Appx. 522, 524 (9th Cir. 2018); *see Taylor*, 880
12 F.2d at 1045 (citing *Ybarra v. Reno Thunderbird Mobile Home Village*, 723F.2d
13 675, 680–81 (9th Cir. 1984); *see also Starr v. Baca*, 652 F.3d 1202, 1207 (9th Cir.
14 2011) (a supervisor can only be held liable for his or her own culpable action or
15 inaction). Although a supervisor’s acquiescence to a constitutional violation can
16 result in her liability, still there must “be a ‘sufficient causal connection’ between
17 the supervisor’s own conduct and the violation.” *Hunt*, 749 Fed. Appx. at 524
18 (quoting *Starr*, 652 F.3d at 1207). To establish a causal connection between the
19 supervisor’s conduct and the violation, the plaintiff must show either: (1) the
20 supervisor set in motion the actions that caused the constitutional injury; or (2) the
21

1 supervisor knowingly refused to stop the actions of others and knew or had reason
2 to know that those actions would inflict a constitutional injury. *Id.*

3 Mr. Priest has not provided evidence to support his allegations against the
4 supervisor Defendants. No evidence on the record shows that any of the
5 supervisory defendants had knowledge of Mr. Priest's eagle feathers. No evidence
6 on the record would allow a reasonable juror to conclude that any of the
7 supervisors knew or should have known of a constitutional violation, or took
8 actions to set a constitutional violation in motion. *See Hunt*, 749, Fed. Appx. at
9 524. Additionally, Mr. Priest acknowledged in his deposition that he has no
10 information showing that Defendants have taken or destroyed any other inmates'
11 religious property. ECF No. 67-1 at 44. While Mr. Priest makes supportive
12 allegations in his Complaint and in his pleadings, he does not present facts to
13 support his argument regarding supervisory liability. Specifically, he does not
14 present facts demonstrating a causal connection between the taking of his eagle
15 feathers and any action or inaction taken by the supervisor Defendants.

16 Mr. Priest has not provided evidence demonstrating that Defendants
17 Holbrook, Jackson, Alvarado-Jackson, or Brewer caused the alleged constitutional
18 violations through the theory of supervisory liability. Additionally, as the Court
19 already has explained, Mr. Priest has not presented evidence from which a
20 reasonable juror could conclude that Defendants were integral participants in the
21 alleged constitutional violations, nor can he rely on *res ipsa loquitor* to establish

1 causation here. As Mr. Priest has not presented evidence to establish an essential
2 element of his Section 1983 claims, causation. Therefore, Mr. Priest's Section
3 1983 claims, through which he brought his constitutional claims, must be
4 dismissed with prejudice. *See Celotex Corp.*, 477 U.S. at 331.

5 II. RLUIPA & RFRA

6 In addition to his constitutional claims, pursued through Section 1983, Mr.
7 Priest has brought a claim under RLUIPA. RLUIPA provides that “[n]o
8 government shall impose a substantial burden on the religious exercise of a person
9 residing in or confined to an institution . . . even if the burden results from a rule of
10 general applicability,’ unless the government establishes that the burden furthers a
11 ‘compelling governmental interest,’ and does so by ‘the least restrictive means.’”
12 *Greene v. Solano Cty. Jail*, 513 F.3d 982, 986 (9th Cir. 2008) (quoting 42 U.S.C. §
13 2000cc-1(a)(1)–(2)). In a RLUIPA claim, the plaintiff “bears the burden of
14 establishing that a prison policy constitutes a substantial burden on [his or her]
15 exercise of religion.” *Sprouse v. Ryan*, 346 F. Supp. 3d 1347, 1355 (D. Ariz.
16 2017). If the plaintiff makes a prima facie showing that the challenged policy
17 imposes a substantial burden on religious exercise, then the burden shifts to the
18 government to show that the policy furthers a compelling government interest and
19 is the least restrictive means of furthering that interest. 42 U.S.C. § 2000cc-2(b);
20 *Greene*, 513 F.3d at 986.

1 Mr. Priest has not provided evidence of any law, policy, or practice
2 prohibiting him from practicing his religion. He bases his RLUIPA claim on the
3 fact that his eagle feathers were taken. *See* ECF No. 65 at 8. However, no
4 evidence on the record supports the argument that Mr. Priest's feathers were taken
5 pursuant to any prison policy or practice. Therefore, Mr. Priest's claim under
6 RLUIPA fails as a matter of law.

7 Mr. Priest also has brought a claim under RFRA. However, RFRA is not
8 applicable to state or local law. *City of Boerne v. Flores*, 521 U.S. 507, 532
9 (1997); *Guam v. Guerrero*, 290 F.2d 1210, 1219 (9th Cir. 2002) (citing *Worldwide*
10 *Church of God v. Phila. Church of God, Inc.*, 227 F.3d 1110, 1120 (9th Cir. 2000)
11 ("We have held, along with most other courts, that the Supreme Court invalidated
12 RFRA only as applied to state and local law.")). Mr. Priest has asserted claims
13 against state actors, and he has not indicated that any federal law or policy has
14 infringed on his religious practices. Thus, Mr. Priest's RFRA claim fails as a
15 matter of law.

16 Accordingly, **IT IS HEREBY ORDERED:**

17 1. Defendants' Amended Motion for Summary Judgment, **ECF No. 61**, is

18 **GRANTED.**

19 2. Plaintiff's claims are **dismissed with prejudice.**

20 3. Judgment shall be entered for all Defendants.

4. Any remaining, pending motions in this matter are **DENIED AS MOOT**,
and any hearing dates are hereby **STRICKEN**.

IT IS SO ORDERED. The District Court Clerk is directed to enter this Order, provide copies to counsel, and **close this case**.

DATED February 13, 2020.

s/ Rosanna Malouf Peterson
 ROSANNA MALOUF PETERSON
 United States District Judge